



Senate

General Assembly

File No. 204

February Session, 2016

Substitute Senate Bill No. 159

Senate, March 24, 2016

The Committee on Insurance and Real Estate reported through SEN. CRISCO of the 17th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE INSURANCE DEPARTMENT'S MARKET CONDUCT AUTHORITY AND DATA CALL CONFIDENTIALITY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 38a-15 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2016*):

3 (a) The commissioner shall, as often as the commissioner deems it
4 expedient, undertake a market conduct examination of the affairs of
5 any insurance company, health care center, third-party administrator,
6 as defined in section 38a-720, or fraternal benefit society doing
7 business in this state. Any such examination may be conducted in
8 accordance with the procedures and definitions set forth in the
9 National Association of Insurance Commissioners' Market Regulation
10 Handbook.

11 (b) To carry out the examinations under this section, the
12 commissioner may appoint, as market conduct examiners, one or more
13 competent persons, who shall not be officers of, or connected with or

14 interested in, any insurance company, health care center, third-party
15 administrator or fraternal benefit society, other than as a policyholder.
16 In conducting the examination, the commissioner, the commissioner's
17 actuary or any examiner authorized by the commissioner may
18 examine, under oath, the officers and agents of such insurance
19 company, health care center, third-party administrator or fraternal
20 benefit society and all persons deemed to have material information
21 regarding the company's, center's, administrator's or society's property
22 or business. Each such company, center, administrator or society, its
23 officers and agents, shall produce the books and papers, in its or their
24 possession, relating to its business or affairs, and any other person may
25 be required to produce any book or paper in such person's custody,
26 deemed to be relevant to the examination, for the inspection of the
27 commissioner, the commissioner's actuary or examiners, when
28 required. The officers and agents of the company, center, administrator
29 or society shall facilitate the examination and aid the examiners in
30 making the same so far as it is in their power to do so.

31 (c) Each market conduct examiner shall make a full and true report
32 of each market conduct examination made by such examiner, which
33 shall comprise only facts appearing upon the books, papers, records or
34 documents of the examined company, center, administrator or society
35 or ascertained from the sworn testimony of its officers or agents or of
36 other persons examined under oath concerning its affairs. The
37 examiner's report shall be presumptive evidence of the facts therein
38 stated in any action or proceeding in the name of the state against the
39 company, center, administrator or society, its officers or agents. The
40 commissioner shall grant a hearing to the company, center,
41 administrator or society examined before filing any such report and
42 may withhold any such report from public inspection for such time as
43 the commissioner deems proper. The commissioner may, if the
44 commissioner deems it in the public interest, publish any such report,
45 or the result of any such examination contained therein, in one or more
46 newspapers of the state.

47 (d) (1) All the expense of any examination made under the authority

48 of this section, other than examinations of domestic insurance
49 companies and domestic health care centers, shall be paid by the
50 company, center, administrator or society examined. [, and]

51 (2) No domestic insurance company or domestic health care center
52 subject to an examination under this section shall pay as costs
53 associated with the examination the salaries, fringe benefits or travel
54 and maintenance expenses of examining personnel of the Insurance
55 Department engaged in such examination if such domestic insurance
56 company or domestic health care center is otherwise liable to
57 assessment levied under section 38a-47, except that domestic insurance
58 companies and [other domestic entities] domestic health care centers
59 examined outside the state shall pay the [traveling] travel and
60 maintenance expenses of [examiners] such examining personnel.

61 (e) (1) No cause of action shall arise nor shall any liability be
62 imposed against the commissioner, the commissioner's authorized
63 representative or any examiner appointed or engaged by the
64 commissioner for any statements made or conduct performed in good
65 faith while carrying out the provisions of this section.

66 (2) No cause of action shall arise nor shall any liability be imposed
67 against any person for the act of communicating or delivering
68 information or data pursuant to an examination made under the
69 authority of this section to the commissioner, the commissioner's
70 authorized representative or an examiner if such communication or
71 delivery was performed in good faith and without fraudulent intent or
72 the intent to deceive.

73 (3) The provisions of this subsection shall not abrogate or modify
74 any common law or statutory privilege or immunity heretofore
75 enjoyed by any person identified in subdivision (1) of this subsection.

76 (f) Nothing in this section shall be construed to prevent or prohibit
77 the commissioner from disclosing at any time the content or results of
78 an examination report or a preliminary examination report or any
79 matter relating to such report, to (1) the insurance regulatory officials

80 of this state or any other state or country, (2) law enforcement officials
81 of this or any other state, or (3) any agency of this or any other state or
82 of the federal government, provided such officials or agency receiving
83 the report or matters relating to the report agrees, in writing, to hold
84 such report or matters confidential.

85 (g) All workpapers, recorded information, documents and copies
86 thereof produced by, obtained by or disclosed to the commissioner or
87 any other person in the course of an examination made under the
88 authority of this section shall be confidential, shall not be subject to
89 subpoena and shall not be made public by the commissioner or any
90 other person, except to the extent provided in subsection (f) of this
91 section. The commissioner may grant access to such workpapers,
92 recorded information, documents and copies to the National
93 Association of Insurance Commissioners, provided said association
94 agrees, in writing, to hold such workpapers, recorded information,
95 documents and copies thereof confidential.

96 Sec. 2. Subsection (a) of section 38a-16 of the general statutes is
97 repealed and the following is substituted in lieu thereof (*Effective*
98 *October 1, 2016*):

99 (a) (1) The Insurance Commissioner or the commissioner's
100 authorized representative may, as often as the commissioner deems
101 necessary, conduct investigations and hearings in aid of any
102 investigation on any matter under the provisions of this title. Pursuant
103 to any such investigation or hearing, the commissioner or the
104 commissioner's authorized representative may issue data calls,
105 subpoenas, administer oaths, compel testimony, order the production
106 of books, records, papers and documents, and examine books and
107 records. If any person refuses to allow the examination of books and
108 records, to appear, to testify or to produce any book, record, paper or
109 document when so ordered, a judge of the Superior Court, upon
110 application of the commissioner or the commissioner's authorized
111 representative, may make such order as may be appropriate to aid in
112 the enforcement of this section.

113 (2) Data provided in response to a data call under this section shall
114 not be subject to disclosure under section 1-210.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2016</i>	38a-15
Sec. 2	<i>October 1, 2016</i>	38a-16(a)

INS *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill sets certain standards for the Department of Insurance when conducting market conduct examinations. The bill also expands the work paper confidentiality provisions concerning these examinations. There is no fiscal impact from these changes.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 159****AN ACT CONCERNING THE INSURANCE DEPARTMENT'S
MARKET CONDUCT AUTHORITY AND DATA CALL
CONFIDENTIALITY.****SUMMARY:**

This bill makes changes to the insurance statute on market conduct examinations. By law the insurance commissioner must examine regulated entities (i.e., insurers, HMOs, third-party administrators, and fraternal benefit societies doing business in Connecticut) to determine their compliance with applicable state laws and regulations. The commissioner appoints examiners to perform the examinations.

Specifically, the bill:

1. allows the commissioner to conduct examinations in accordance with the National Association of Insurance Commissioners' (NAIC) Market Regulation Handbook;
2. immunizes from liability examiners or people providing information in support of an examination for acts performed in good faith;
3. makes examination workpapers confidential;
4. allows the commissioner to share examination reports or results with insurance regulatory officials, law enforcement officials, and government agencies; and
5. clarifies when domestic regulated entities are required to pay examination expenses.

The bill also explicitly authorizes the insurance commissioner to issue "data calls" to regulated entities and exempts data provided in

response from disclosure under the Freedom of Information Act. A data call is commonly understood to mean a request or directive for regulated entities to provide the Insurance Department with information, usually within a certain timeframe, for analysis and potential regulatory action. The law already authorizes the commissioner to conduct investigations into any matter arising under the insurance statutes.

EFFECTIVE DATE: October 1, 2016

MARKET CONDUCT EXAMINATIONS

Immunity

The bill immunizes from liability (1) the commissioner, her authorized representatives, and appointed examiners for statements made or conduct performed in good faith during an examination and (2) anyone, who in good faith and without intent to defraud or deceive, gives the above people information in support of an examination. It does not abrogate or modify any common law or statutory privilege or immunity the commissioner, her representatives, or appointed examiners currently enjoy.

Confidentiality

Under the bill, examination workpapers, recorded information, documents, and copies of these are confidential and not subject to subpoena. The bill prohibits anyone, including the commissioner, from making such information public, but it allows her to give NAIC access to the information, if NAIC agrees in writing to keep it confidential.

The bill allows the commissioner to share examination reports, preliminary reports, or their results with insurance regulatory officials, law enforcement officials, and government agencies if the recipient agrees in writing to keep the information confidential. (In practice, the Insurance Department makes final examination reports publicly available on its website.)

Examination Expenses

By law, the entity being examined must pay the examination expenses, except for domestic insurers or HMOs. However, domestic entities examined outside the state must pay the examiners' travel and maintenance expenses.

The bill specifies that domestic insurers and HMOs assessed to pay for the expenses of the Insurance Department and Office of Healthcare Advocate do not have to pay examination expenses (i.e., salaries, fringe benefits, and travel and maintenance costs) of the Insurance Department's market conduct examination personnel. However, domestic insurers and HMOs examined outside of the state must pay for the examiners' travel and maintenance expenses.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable

Yea 18 Nay 0 (03/08/2016)